

# INFORMATION BULLETIN

## WORKFORCE INVESTMENT ACT

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TO: WORKFORCE DEVELOPMENT COMMUNITY

SUBJECT: TITLE IB DISLOCATED WORKER FUNDED SERVICES ELIGIBILITY

The purpose of this information bulletin is to clarify eligibility for Migrant Seasonal Farmworkers to utilize Workforce Investment Act (WIA) Title I Dislocated Worker Services. Underutilization is an issue at both the federal and State levels. The House of Representatives Committee on Appropriations, for instance, has requested that the Department of Labor submit a report by June 30, 2002, on the extent that Migrant Seasonal Farmworkers utilize WIA services. The report must include the causes of the underutilization.<sup>1</sup> To this end, the California Workforce Investment Board (CalWIB) is examining the causes for farmworkers' underutilization of WIA Title IB adult, dislocated worker, and youth services in California.

As stated in the WIA federal regulations,<sup>2</sup> "There is no language in that section [WIA Title IA, Section 101(9)] . . . authorizing an eligibility definition based on industry . . . thereby allowing any exclusion based on the same." Any blanket exclusion based on any occupation, industry, or association with any identifiable group would be contrary, then, to the intent of the WIA, which is to consider and respond to the uniqueness and the needs of individuals by fully utilizing the available WIA services, including dislocated worker services.

The inherently seasonal nature of farmworker occupations has been incorrectly perceived by some practitioners as disqualifying under the "unlikely to return to work" standard in WIA, Section 101(9)(A) (see attachment). In fact, individuals that may have worked seasonally can be considered unlikely to return to work in a previous industry or occupation for a variety of reasons such as:

1. Change in family situation that requires higher income;
2. Disability that precludes returning to the same occupation;
3. Natural disaster that results in lost wages;
4. Loss of agricultural land;
5. Mechanization, or
6. Any significant variance to normal seasonal employment patterns, resulting in uncertain return-to-work dates.

<sup>1</sup> HR Report 107-229, DEPARTMENT OF LABOR, HEALTH AND HUMAN SERVICES, AND EDUCATION, AND RELATED AGENCIES APPROPRIATIONS BILL, 2002; p.10

<sup>2</sup> 20 CFR Part 652 and Parts 660 through 671; II Summary and Explanation, p.49317

Additionally, permanent closures or a substantial layoff from agricultural enterprises and facilities such as packaging, canneries, or farming are not excluded from the standard under WIA, Section 101(9)(B). The WIA, Section 101(9)(C) standard regarding those that were self-employed (including employment as a farmer, a rancher, or a fisherman) and are unemployed due to economic conditions that resulted from extreme or unusual weather patterns and agricultural market downturns can also apply to farmworkers.

The eligibility principle that must be stressed is that an individual's unique circumstances determine eligibility to any WIA-funded service beyond the core services. The WIA provides local areas increased flexibility to implement systems that best suit the needs of local communities (see attachment).

Local workforce investment communities should collaborate with California's strong association of farmworker programs and advocates, many of which are partners in our local One-Stop service delivery systems. The intent of the WIA is for these programs to supplement workforce investment efforts to serve the farmworker population. Local Workforce Investment Areas should leverage resources with national programs funded through WIA Title ID, Community Development Block Grants (CDBG), and other partner programs to effectively meet the needs of the California's agricultural workforce.

The Department of Labor Region VI and the CalWIB will be conducting regional forums throughout the State regarding farmworkers' utilization of WIA Title IB services during the early part of 2002. Further information regarding the regional forums will be forthcoming.

If you have any questions about this bulletin, please contact your Workforce Investment Division [Regional Advisor](#).

/S/ BILL BURKE  
Chief

Attachment

***Dislocated Worker Eligibility Criteria/Definition  
and Illustrations of Local Policy***

Below are the Workforce Investment Act (WIA), Section 101(9) definitions of a "dislocated worker." Following each WIA eligibility standard are illustrations of how local areas have exercised the permissible local flexibility to implement systems that best meet the needs of their local communities. The selected examples of local policies do not exclude any occupations, industries or associations and provide the local areas the opportunity to make the best use of their WIA dislocated worker funds.

A Dislocated Worker is an individual who:

- (A) (i) Has been terminated or *laid off*, or who has received a notice of termination or layoff, from employment;

**and**

- (ii) (I) Is eligible for or has exhausted entitlement to unemployment compensation;

**or**

- (II) Has been employed for a duration sufficient to demonstrate, to the appropriate entity at a One-Stop center referred to in Section 134(c), *attachment to the workforce*, but is not eligible for unemployment compensation due to insufficient earnings or having performed services for an employer that were not covered under a State unemployment compensation law;

**and**

- (iii) Is *unlikely to return* to a previous industry or occupation;

**Sufficient attachment to the workforce:** *"A period of 90 cumulative full or part time workdays within the last two (2) years prior to the date of the WIA application/registration. For the purpose of this definition, a workday can include as little as 2 hours of work. Part time employment conditions that, by their nature or design, restrict the number of hours available for work in any day are acceptable in determining sufficient attachment. Examples include, but are not limited to school aides, baby sitters, domestics, etc."*

**Unlikely to return:** *"Unless obviated by conditions or circumstances associated with dislocation, a WIA participant may provide written self-certification or determination of the likeliness of returning to their previous occupation or industry. For the purpose of this definition, either the occupation **or** industry may be used to meet this criterion."*

(One Local Workforce Investment Area is in the midst of developing "Collaborative Strategies" with a WIA Section 167 grantee to cross-educate staff on eligibility issues, and is currently using Major Statistical Area data showing a decline in agricultural jobs as documentation of "unlikely to return" for agricultural workers.)

*"Worked in a declining industry/occupation, as documented on State or locally-developed lists of such industries/occupations. State lists are available from the Employment Development Department's (EDD) Labor Market Information Division. Local lists must be developed by an appropriate entity, such as the Chamber of Commerce, the Local Workforce Investment Board, economic development agency, a qualified consultant/educational entity, or other valid public use quality source of labor market information."*

*"Has had a lack of job offers as documented by the local Job Service/Unemployment Insurance (JS/UI) office, rejection letters from employers in the area, or other documentation of unsuccessful efforts to obtain employment in the prior industry/occupation."*

*"Worked in an industry/occupation/job for which there are limited job orders in the EDD CalJOBS system at the time of eligibility determination, as certified by the local EDD field office or by One-Stop staff with access to the CalJOBS database."*

*"Has physical or other problems, which would preclude reentry into the former industry/occupation, as documented by a physician or other applicable professional (e.g., psychiatrist, psychiatric social worker, chiropractor, etc.)."*

Or

- (B) (i) Has been terminated or laid off, or has received a notice of termination or layoff, from employment as a result of any permanent closure of, or any *substantial layoff* at, a plant, facility, or enterprise;

or

- (ii) Is employed at a facility at which the employer has made a *general announcement* that such facility will close within 180 days;

or

- (iii) For purposes of eligibility to receive services other than training services described in Section 134(d)(4), intensive services described in Section 134(d)(3), or supportive services, is employed at a facility at which the employer has made a general announcement that such facility will close;

**Substantial layoff:** *"Any event that results in the temporary or permanent reduction in workforce by 20% of employees either by department or total company, but not necessarily resulting in permanent closure."*

*"Any temporary or permanent reduction in workforce by 10% of employees either by department or total company, but not necessarily resulting in permanent closure".*

Or

- (C) Was self-employed (including employment as a farmer, a rancher, or a fisherman) but is unemployed as a result of *general economic conditions* in the community in which the individual resides or because of natural disasters;

**General economic conditions:** *"Are defined as those that have a direct adverse affect on self-employed individual(s) and are beyond one's control. Examples include but are not limited to, seasonal factors, unforeseen or unusual operating costs, and depressed market conditions."*

Or

- (D) Is a *displaced homemaker*.